



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 4, 1996

Ms. Cheryl N. Elliot
General Counsel
Texas Southern University
3100 Cleburne Avenue
Houston, Texas 77004

OR96-1825

Dear Ms. Elliot:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101317.

Texas Southern University (the "university") received a request for access to the resumes of the ten finalists for a one year history position and the written recommendations of the search committee members regarding the selection of a finalist for the position. You contend that the requested information is excepted from disclosure under section 552.102 of the Government Code.

Section 552.301(b) requires a governmental body to submit to this office (1) general written comments giving the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to us a copy of the written request for information.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated August 1, 1996 that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days after the date you received our notice. The notice further stated that failure to comply with our request would result in the legal presumption that the information at issue is public information. See Gov't Code § 552.303(e).

You did not provide our office with the information that was requested within seven days of receiving our notice. Therefore, as provided by section 552.303(e), the information that is the subject of the request for information is presumed to be public information. Information that is presumed public must be released unless a governmental body demonstrates the existence of a compelling interest that overcomes this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Section 552.102 protects the privacy interests of third parties. Therefore, if information falls within the scope of section 552.102, a compelling reason exists to overcome the presumption of openness under section 552.303(e). See Open Records Decision No. 552 (1990) at 1. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information in personnel files only if it meets the test articulated under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. The court considered intimate and embarrassing information such as that relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Having reviewed the information at issue, we find that it is not highly intimate and embarrassing and, therefore, does not meet the first prong of the *Industrial Foundation* test. Thus, section 552.102 does not except the information from disclosure.

We note also that the requested information includes the home addresses and phone numbers of individuals who may have been or may currently be public employees. Section 552.117(1)(A), together with section 552.024, permits a government official or employee to choose whether to allow public access to their home addresses and telephone numbers. If a governmental employee avails himself of sections 552.024 and 552.117 while employed, that protection does not cease when his employment relationship ends. Open Records Decision No. 455 (1987) at 2. Thus, the university must not release the home address or telephone number of any current or former official or employee who, before this request was made, asked that this information be kept confidential. Open Records Decision No. 530 (1989) at 5-6. The university must release all other requested information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented

to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref: ID# 101317

Enclosures: Submitted documents

cc: Mr. Robert Jackson
Texas Faculty Association
Texas Southern University Chapter
1415 Southmore
Houston, Texas 77004
(w/o enclosures)